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SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 February 1993]

CRIMES AGAINST HUMANITY

1. The phrase "crimes against humanity" has been used at this session of the Commission on Human Rights and was used often during the period of 90 days or so that preceded the session. Rarely, however, has there been public discussion of what those words mean juridically. Instead, it appears that the basic concept (assumed by media reports) has been "atrocities".

2. Clearly, of course, an act should be condemned if "at the time when it was committed it was criminal according to the general principles of law recognized by the community of nations". See article 15 (2) of the International Covenant on Civil and Political Rights, and also articles 6 (2) and 6 (3), concerning genocide.

3. After the Second World War, the judgement of the International Military Tribunal in Nuremberg was entered pursuant to the Charter of that tribunal. In subsequent cases regarding countless war criminals in Europe, however, the tribunal and the procedures were national rather than international. By Four Power treaty the national judges were empowered to apply international law, but each court served its own government.

4. That international law (titled Allied Control Council Law No. 10, signed on 20 December 1946) covered more than atrocities. The carefully worded mandate proscribed "[a]trocities and offences". And what were offences? Two kinds of wrongdoings were identified: "inhumane acts committed against any civilian population" and "persecutions on political, social or religious grounds ...". The document contained no explanation of persecutions, but the phrase "inhumane acts" was declared specifically to include (but was "not limited to") murder, extermination, enslavement, deportation, imprisonment, torture, and rape - each of which was limited, of course, by the words "committed against any civilian population".

5. Are the wrongdoings thus described the concern of criminal law only? Indeed not. Uncountable thousands of Nazis and other Second World War gross violators suffered civil penalties, rather than - and/or in addition to - criminal punishment. Moreover, uncounted millions of victims obtained restitution, rehabilitation, reparations, etc. that were based on the Allied Control Council Law No. 10 definitions but were prescribed pursuant to traditions of civil rather than criminal law.

6. For related discussion, readers might wish to examine Professor David Caron's "Introductory Note to United Nations Compensation Commission Report with Decisions of the Governing Council" (1992) XXXI I.L.M. No. 5 (September 1992) pp. 1009-1017; also Van Boven et al (eds), Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms (1992); cf. "Redress for Gulf War Violations of Human Rights" (1992) 20 Denver J. of Int. L. & Pol. 213.